2001

Adrian Niculescu v. Chrysler Credit Corporation : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
STATE OF UTAH

ADRIAN NICULESCU

Appellant	:	**BRIEF OF APPELLANT**
vs.	:	Priority No. 15
CHRYSLER CREDIT CORPORATION, et. al.	:	Case No. ~~20010440~~CA
Respondent	:	

20010404

BRIEF OF APPELLANT

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Priority Classification 15

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PARTIES

The appellant is Adrian Niculescu, represented by Mark A. Besendorfer. The Respondents, Chrysler Credit Corporation and Chrysler Motor Corporation, are represented by the P. Bryan Fishburn.

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JURISDICTIONAL STATEMENT

This court has jurisdiction pursuant to U.C.A. 78-2A-2(3)(j).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

A. Whether the lower court erred in granting summary judgment with respect to any claims dealing with negligent damage to Appellant's credit, dismissing those claims. The lower court ruled that the applicable standard was malice, rather than negligence, because that was the only standard under which the Appellant could recover at the time of the original filing of the lawsuit. Appellant argued that the actions of respondents in failing to correct the credit report, and their failure to comply with the settlement agreement, which occurred after the amendment of the law allowing claims for negligent damage, should be considered in light of the amended law and more liberal standard. The lower court's decision should be viewed for correctness and no deference should be given the trial court's determination as to the applicability of the rule.

B. Whether the lower court erred in not imposing sanctions for delays and the refusal of the respondents to comply with discovery requests. The court refused to deem requests for

admission admitted when no timely response was filed to such requests. The lower court's decision should be viewed for correctness and no deference should be given the trial court's determination as to the applicability of the rule.

C. Whether the lower court erred in finding that the Appellant failed to prove by a preponderance of the evidence that the Respondent's actions were intentional and malicious, and therefore actionable.

D. Whether the court erred in not granting the appellant's motion for relief from judgment and not amending the findings and judgment. This issue is viewed against a standard of abuse of discretion.

CONSTITUTIONAL OR STATUTORY PROVISIONS

1. 15 U.S.C. 1681.

2. Rule 36, Utah Rules of Civil Procedure

STATEMENT OF CASE

The appellant purchased a new Chrysler van from Hinckley Chrysler on the 11th day of arch, 1987. He returned it to the dealership, prior to the first payment becoming due, claiming it was defective. He informed Chrysler Credit that he would not pay for the vehicle because of the problems. Chrysler Credit obtained the vehicle from the dealership, sold it, and claimed a deficiency, although no effort was made to collect the deficiency. The credit company listed the transaction, and reported it to all of the major credit reporting agencies, as a repossession. When the appellant, who had previously enjoyed a good credit report, next attempted to purchase another vehicle, he was denied financing because of the now negative credit report.

The appellant filed suit against the dealership and Chrysler Motor Corporation in United States District Court for Utah, alleging breach of contract and breach of warranty. That matter was eventually settled out of court. The present action was filed against Chrysler Credit Corporation in 1989, alleging damage to the credit of the Appellant for the false and negative credit report under 15 U.S.C. 1681. Discovery ensued and various motions were heard. Respondent continually delayed the matter by failing to timely respond to discovery requests.

Eventually, in August of 1992 a settlement was reached and signed by the parties. The essence of the settlement was that the respondent agreed to pay a small amount of money to the appellant, and also agreed to notify all credit reporting agencies by way of a letter and explanation of the terms of the settlement and requesting they correct or delete the credit entry of repossession related to the transaction.

When the appellant's efforts to obtain proof of compliance by the respondent were unsatisfactory, he filed a motion to have the settlement vacated and re-open the case. The respondent failed to respond, and the court granted the motion. Further discovery commenced, including paper discovery and depositions. Among the paper discovery were requests for admissions, which were not timely answered by the respondent. A motion to compel was granted and the answers were belatedly received, although they amounted to general denials based upon lack of information. A motion for further sanctions was filed and denied by the trial judge.

A motion for summary judgment was filed by the respondent. Two of the causes of action were dismissed, and another was limited in scope, leaving one cause of action and part of another intact, essentially requiring that, in order to prevail at trial, appellant would have to prove that the credit report was false and that the error was intentional or malicious.

The assigned trial judge, the late Anne Stirba, was gravely ill by the time the trial was held. Retired judge Douglas L. Cornaby was assigned to try the case, Judge Stirba having previously denied a motion to allow the matter to be tried by a jury. In spite of the bulk of the file and the many actions taken in the matter over the years, the judge had apparently only seen the file shortly before the trial date. Trial was held on the 12th and 13th of February, 2001. Five witnesses were called and some 30 exhibits were received. The court announced its findings and a proposed order was prepared. Objections to the order were filed and another judge, the Honorable Bruce Lubeck, who was now assigned to the cases of Judge Stirba, ruled on the objections, denying them and affirming the original form of the order. This appeal was taken from that order. The matter was filed in the Utah Supreme Court and then assigned to this court.

STATEMENT OF FACTS

Mr. Adrian Niculescu testified that he had been born in Romania and had emigrated to this country to escape the conditions there and partake of what this country had to offer. He and his wife and children began to build a typical American life. He established his credit and was able to purchase a new 1983 Chevrolet Cavalier in 1983 for approximately $13,000, which he paid off on time in 1987. (T.R. p. 26). During this same time period he also bought on credit and paid off another vehicle for his wife, a Nissan. (T.R. p. 27). He had other credit accounts as well, including an account to finance the purchase of furniture. (T.R. p. 28). The respondent conceded that there was no evidence that the appellant had ever been turned down for credit before the purchase in issue here. (T.R. p. 14).

The appellant, therefore, had exemplary credit on March 11, 1987, when he purchased a new 1987 van and financed the entire purchase price through Chrysler Credit Corporation. The contract of sale was introduce as Exhibit 16. The van was to be used to enable the Appellant to engage in the more lucrative ski and mountain resort fares, where he could transport more passengers and bulkier luggage, such as skis. (T.R. p. 32). It was financed through Chrysler Credit Corporation, with a total payoff, over the life of the contract, of approximately $24,000. The appellant started having problems with the van almost immediately. Besides problems with the sliding door that would not close and other minor matters, the vehicle had a serious oil leak. (T.R. p. 34, 35, Exhibit 17 and 18). However, when the van was not at the dealership being repaired, the appellant was using the van and it was working out as he had hoped, allowing him to bring in fares of $2000 in approximately three weeks. (T.R. p. 37). He had expenses for fuel and fees to the cab company during this same period to time, of approximately $360, leaving him a net earning of $1,640, or $2,186 per month. (T.R. p. 38).

Mr. Niculescu took the van to be repaired numerous times. (T.R. p. 39). After the dealer either could not, or would not properly repair the van, the Appellant sent letters to the dealership and the manufacturer. When he received no response or appropriate action, he returned the van to

the dealership, with the keys, and explained to the manager that he was returning the van, as it was defective, and he could not transport passengers in it.(T.R. p. 42).

At the same time he sent certified letters to the dealership, the manufacturer and Chrysler Credit. In the letter he explained the reason for his action, that is, that the van was defective and was not repaired.(T.R. p. 40). Return receipts were introduced (Exhibits 20 and 21) which Mr. Niculescu testified were receipts from some, but not all of the letters he wrote.(T.R. p. 43, 44). The receipts were dated as being sent March 31, 1987, some two weeks before the first payment was due on the vehicle. Mr. Niculescu testified as to the content of the letters. He stated that he informed the recipients of the letters that he was returning the vehicle because of the problems with the engine oil leaking and the defective and dangerous sliding door.(T. R. p. 43). He testified that he received no response to any of his letters, or the phone calls he made during the same period of time.(T.R. p. 45).

In the summer of 1987 Mr. Niculescu attempted to purchase another vehicle on credit. (T.R. p. 49). His application was denied because of a negative credit entry, that is, the credit history showed that the transaction concerning the purchase and return of the van had been reported by Chrysler Credit as a repossession, the most damaging credit code other than perhaps a charge-off. (T.R. 266). Appellant submitted several documents (Exhibits 24, 25, 26 and 27) dated variously between July and December of 1987, showing instances of denied applications for credit, both for the purchase of vehicles, and other credit matters. (T.R. p. 55-58).

Mr. Niculescu testified that as a result of the actions of the respondent, and the subsequent damage to his credit, he was unable to borrow money at a reasonable market rate, if at all, sometimes paying as much as 525% interest. (T.R. p. 60). He indicated that his financial situation snowballed, in that he could not afford to pay the exorbitant rates, further decreasing his available income, causing him to have to live in his car, and finally, to declare bankruptcy in 1992.(T.R. p. 61; p. 129).

The year 1992 was also the year that the appellant finally worked out a settlement with the respondent. After resisting the lawsuit for three years, they agreed, by written stipulation, to pay

the appellant $1,500 and agreed to delete the reference to the repossession and to inform credit agencies of the terms of the settlement. (See Exhibit 30). The salient paragraph reads:

> "Chrysler Credit Corporation shall issue to the appropriate credit reporting bureau an explanation detailing the complete satisfaction and settlement of its outstanding credit report relative to the agreeing Niculescu, including , if possible, a retraction of the repossession notice. Said explanation shall e in conformity with the rules and regulations of the credit bureau."

But the respondents never complied with the settlement agreement. Not only did the appellant have to repeatedly request proof of compliance, but when some attempt to show compliance was made, it did not comply with the written agreement that the respondent signed. (T.R. p. 66, 64, Exhibit 32). In fact, Judge Cornaby so found. In the partial transcript that was prepared, only covering the court's ruling, at page 3, the court finds, with respect to the compliance, "I don't believe that filled the requirements of that paragraph. I think that it should have been more than that, and it should have been done immediately. When I say immediately, about 30 days, something like that, to give the parties a chance to get notified and do what they are supposed to do."

The appellant filed a motion to reopen the case, alleging that the respondent had no complied with the agreement. The respondent did not respond to the motion and Judge Stirba granted the motion. Further discovery proceeded, with the respondent repeatedly being late or deficient in their responses. (See Exhibit , Addendum). When the appellant requested production of documents, the respondent indicated that it had destroyed the file sometime after 1992, thinking the matter had been resolved, even though the appellant, during the same period of time, was requesting proof of compliance from respondent's counsel, as stated earlier. Chrysler Credit's representative confirmed the destruction of the documents. (T.R. p. 179).

Several acquaintances of Mr. Niculescu were called and testified as to their observations of his financial and living conditions during the time after the report of repossession was made. John Rhoades testified that he knew Mr. Niculescu as a cab driver, as he, Rhoades was a shuttle

driver for the airport. (T.R. p. 135). Mr. Rhoades testified about the long hours he knew Mr. Niculescu to work, and the financial realities of the cab business, the advantage of owning your own vehicle, and the lucrative ski resort business.(T.R. p. 138-139). Mr. Florin Preda, another cab driver who knows Mr. Niculescu, testified similarly, as well as testifying as to Mr. Niculescu's change in financial and personal circumstances during the relevant time period. He testified that Mr. Niculescu was then living as "a bum" and was actually living in his car.(T.R. p. 147). He was also able to compare Mr. Niculescu's status before and after the summer of 1987. (T.R. 153).

Appellant also called Mr. Jon Cassel from Chrysler Credit Corporation. In 1987 Mr. Cassel was a customer accounts manager in the Bountiful, Utah office.(T.R. p. 156). He testified that the dealership's employees would prepare credit applications and submit them to Chrysler Credit.(T.R. p. 158). After testifying generally about credit reporting, he testified about his knowledge of Mr. Niculescu's case. After noting that a repossession was coded as "I 8" by credit bureaus (T.R. p. 161), he explained that after the first payment was not made on April, 25, 1987, a late notice would have gone out on approximately the 5th of May.(T.R. p. 163). He testified that the vehicle apparently sat at the dealership from April 1st until approximately May 19th when Chrysler Credit took possession of it.(T.R. p. 165). He testified that, other than bankruptcy, a repossession was the worst entry that could be made on someone's credit history (T.R. p. 172), and that such a notation affects someone's rating for seven years (T.R. p. 178).

Mr. Cassel also testified that normally it would take 30 to 60 days to correct the credit history, as the settlement agreement required (T.R. p. 181) and yet he was aware that there was a dispute regarding compliance in 1993, that he was working closely with Gary Howell (sic) on the matter, and that no record of any attempt to correct the record was apparent until November of '93.(T. R. p. 184). Mr. Cassel testified as to other instances of Mr. Niculescu's credit history, and reported on credit purchases he made in later years. (T.R. p. 203). He also admitted that there was another way of coding a transaction as a return of purchase (T.R. p. 217-218, commenting on Trial Exhibit 10) rather than a repossession, contrary to his earlier testimony that there was no other way to report Mr. Niculescu's return of the vehicle.

After initially, in discovery, denying that the respondent had any knowledge of investigations or findings of fraud regarding Chrysler Motor Corporation's selling used vehicles as new, Mr. Cassel admitted knowledge of such issues. (T.R. p. 237-238). When appellant's counsel attempted to delve into this issue, the court would not allow it. (T.R. 239). Counsel proffered the relevance and further proffer is contained in the Addendum. (See Exhibit C).

Arlene Bettingfield testified for the respondent. She testified that she worked in the Bountiful office of the respondent during the relevant time period. She testified in general about the workings of the office, having no personal knowledge of Mr. Niculescu's case. She admitted that there was a procedure to correct a credit report within her officer and she had done so on occasion. (T.R. p. 261).

ARGUMENT

THE DISMISSAL OF APPELLANT'S CAUSES OF ACTION BASED UPON NEGLIGENT DAMAGE TO APPELLANT'S CREDIT WAS IMPROPER.

The appellant in this matter claimed a violation of 15 U.S.C. Section 1681. Admittedly, at the time of the filing of the complaint, a violation had to be grounded on a false report that was intentional and malicious. However, at the time of the ruling on the motion, the law had been amended to allow claims for negligence. Since the Appellant's motion to reopen the case was granted, and the Appellant's claims were of an ongoing nature, alleging that the respondent was continuing to erroneously report, and failing to correct his credit history, he should have been allowed the benefit of the new standard, at least as far as the damages occurring after the effective date of the amendment.

THE COURT SHOULD HAVE IMPOSED SANCTIONS FOR FAILURE TO RESPOND TO DISCOVERY AND SHOULD HAVE DEEMED ADMITTED THE REQUESTS FOR ADMISSIONS.

The history of this case is replete with the inability or refusal of the respondent to comply with discovery in a timely manner. At least three motions to compel were filed by the appellant between 1989 and 1992 when the aborted settlement was reached. On two occasions the late discovery consisted of requests for admissions. One set, served on respondent on May 28, 1999, was not answered within 30 days, indeed, it was not answered until October 8, 1999, only after a motion to compel was granted, specifically warning the respondent that failure would result in serious sanctions, such as the striking of its pleadings.

Another set, served on January 27th, 2000, was not responded to until at least February 28th, some 32 days later, and at best the answers were incomplete or wholly deficient. The appellant filed a motion for sanctions dated the 28th day of March, 2000. The court erred in failing to grant the motion and to declare the admissions deemed admitted.

It is clear that requests for admissions are automatically deemed admitted if they are not responded to in the 30 days required by Rule 36(b) of the Utah Rules of Civil Procedure. An equivocal refusal to submit, even if timely filed, can be an admission *Bair v. Axiom Design*, 2001 UT 20, 20 P.3d 388, (Utah 2001). As far back as 1979, in *Schmitt v. Billings*, 600 P.2d 516 (Utah 1979) or in *Whitaker v. Nikols*, 699 P.2d 685 (Utah 1985) this principle has been clear. And our courts have recently reiterated this interpretation of the rule. In the case of *In The Matter of Pendleton, 2000 UT Adv. Rpt. 77*, the Supreme Court stated: [W]e next address whether the matters set forth in the OPC's request for admissions were properly deemed admitted. The disciplinary court deemed the matters admitted because Pendleton failed to file a timely response to the OPC's request for admissions. Rule 36 makes clear that "[e]ach matter of which an admission is requested . . . is admitted" if not responded to within thirty days. Utah R. Civ. P. 36(a)(2); see also *Triple I Supply, Inc. v. Sunset Rail, Inc.*, , 1299-1300 (Utah 1982). In the

instant case, Pendleton failed to timely respond to the OPC's request for admissions. Thus, the trial court correctly concluded that the matters set forth in the OPC's request were deemed admitted.

The court has no discretion in this interpretation. This court reviews the matter for correctness. "We are asked to decide whether the trial court misapplied Rule 36(a) in deeming the requests admitted. The proper interpretation of a rule of procedure is a question of law, and we review the trial court's decision for correctness." *Ostler v. Buhler, 1999 UT Adv. Rpt. 99, 5.*

Likewise, and in accord is State, *In The Interest of E.R., 2000 UT APP 143.* "Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter[.] Utah R. Civ. P. 36(a)(1) & (2) (emphasis added). The rule does not say the court may admit the matter - it says "[t]he matter is admitted." Utah R. Civ. P. 36(a)(2) (emphasis added). By simple operation of Rule 36(a), parties who ignore requests for admissions do so at their peril.

When requests for admissions are properly served, and no written answer or objection has been submitted, the result is automatic - the requests for admissions, as a matter of law, are deemed admitted by simple operation of the rule. *See Jensen v. Pioneer Dodge Ctr., Inc.,* , 100-01 (Utah 1985); *United States v. 2204 Barbara Lane,* , 129 (11th Cir. 1992); *Hughes v. Bobich,* , 755 (Alaska 1994); *W.H. Shipman, Ltd. v. Hawaiian Holiday Macadamia Nut Co.,* , 1209 (Haw. Ct. App. 1990); *Peters,* 709 N.E.2d at 54. See also 4A *Moore's Federal Practice* 36.05[4] n. 6 (2d ed. 1985) (discussing federal rule). 11. Rule 36 provides, in pertinent part, as follows: A party may serve upon any other party a written request for the admission, for purpose of the pending action only, of the truth of any matters . . . that relate to statements or opinions of fact or of the application of law to fact.

In this case it is clear that the admissions were properly served. It is also clear that the respondent at no time requested relief from the admissions. In *Langeland v. Monarch Motors*, 952 P. 2d 1058 (Utah 1998) the court again stated that the only real issue was the preliminary conditions stated in the rule: "Our decisions interpreting the rule have used similar language, conditioning the trial court's discretion on the satisfaction of the rule's preliminary conditions: Utah R. Civ. P. 36(b) provides that those matters deemed admitted are conclusively established as true unless the trial court, on motion by the defendant, permits withdrawal or amendment of the admissions. The trial court has the discretion to permit withdrawal or amendment of admissions when the presentation of the merits of the action would be served and the party obtaining the admissions fails to satisfy the court that he will be prejudiced in maintaining his action. *The trial court does not have discretion to unilaterally disregard the admissions.* (Emphasis in the original).

The sanctions should have been imposed in this matter. The admissions should have been deemed admitted. The substance of the matters covered in the admissions would have conclusively established liability on the part of the respondent, as they required the respondent to admit that they had not independently verified the information about the loan, admit that they received written notification, which they disputed at trial, admit that they did not report the report as disputed, admit that they took no action to correct the credit history of the respondent or to comply with the settlement agreement, admit that they took no action with respect to the credit history of the appellant after notice and after being served with the lawsuit, and to admit that demand had been made upon them to show proof of compliance with the agreement. Such facts, which were disputed at trial, were material facts that, if deemed admitted, would have conclusively established many, if not all of the facts necessary for the appellant to prevail. The court clearly erred in denying the motion for sanctions.

THE APPELLANT PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE RESPONDENT' ACTION'S WERE INTENTIONAL AND MALICIOUS

The Appellant established that the actions of the respondent were intentional and malicious under the statute. Specifically, the appellant established that the report was false. The evidence was largely undisputed that Mr. Niculescu experienced serious problems with the vehicle, including, but not limited to, a major oil leak and several problems with proper closure of the sliding side door. He filed a federal lawsuit in 1987 alleging breach of warranty that was settled out of court.

He returned the vehicle on April 1, 1987. The first payment was not due until April 25th. Mr. Niculescu was making money with the van. Certainly enough money to make the payments and still make a profit. Other than the problems, there was no indication that he was otherwise dissatisfied with his choice or purchase. And he had just been found to be creditworthy some three weeks earlier.

It is also apparent that he notified all of the parties as to his reasons for his actions, this putting the respondent on notice that this was not a repossession case, but a product return or dispute based upon a warranty problem. He introduced certified mail receipts showing the notices and testified about other letters and phone contacts. And although the respondent's witnesses largely denied any knowledge of these contacts, it must be recalled that the parties were trying to reconstruct the activities of something that happened almost fourteen years in the past, the delay being largely a fault of the respondent's failure to comply with the settlement agreement entered into in 1992 and their dilatory tactics in responding to discovery.

Likewise, it is clear that their lack of recollection or ability to recall events had much to do with the fact that they had admittedly destroyed and purged the file, supposedly in the belief that the case had been closed, even though Mr. Cassel testified that he had been in close contact with Chrysler's counsel and knew that there was a dispute as to whether the respondent had complied

with the settlement. Indeed, most of the documents admitted as exhibits in the trial were documents obtained and maintained by the appellant.

There was evidence that there were other ways to report this transaction under the facts known to the respondents. See Exhibit 10, and the testimony of Arlene Bettingfield cited above. The court must look to the entire set of facts and circumstances in analyzing whether the actions were intentional and malicious. In *Promax Development Corp. v. Mattson*, 943 P.2d 347, (Utah App. 1997) the Court of Appeals stated: "Whether a person has acted with malice is a question of fact. *See West v. Thomson Newspapers,* , 187-88 (Utah.Ct.App. 1992) (noting that judgment as matter of law inappropriate where jury could find as matter of fact that people acted with malice), *vacated on other grounds,* (Utah 1994). It follows that the degree of malicious behavior is also a question of fact, reviewable for clear error."

In this case besides the facts noted above, there are numerous other matters relevant and probative of the attitude, and therefore the malice of the respondent. The respondent did not respond to any of the letters of Mr. Niculescu, which were sent on the 15th, 24th and 31st of March of 1987. While the respondent faults the appellant and attempts to avoid responsibility for the false and misleading report by pointing out that he could have contacted the credit agencies directly and disputed the entry, nothing indicates that they informed him of this right, or even that they stood by their report. They simply ignored him.

While they claim that there was no other way to report the transaction, they admit that there are ways to list matters as a "product return." They admit that they have, on occasion, amended or changed credit entries. They knew this was not a simple repossession or credit relevant problem, but a dispute over a warranty with the manufacturer, their parent company.

They clearly had knowledge when the lawsuit was filed, yet they did nothing to correct the problem. In fact, they did everything they could to thwart the efforts of Mr. Niculescu to obtain relief. They delayed and obstructed discovery. They destroyed relevant documents, in spite of their knowledge of the ongoing dispute.

After three years, they entered into a settlement, which the trial court found, was *never* complied with. The only evidence submitted of an attempt to comply with the salient points of the agreement was a copy of a "bullseye" allegedly sent to someone in November 1993, some *fifteen months* after the agreement was signed. This, in spite of the complaints and requests of the appellant. This is what the trial court found totally insufficient compliance with the agreement.

They continued to obstruct and delay discovery, requiring yet more motions to compel to gain compliance and yet providing incomplete responses. All of these facts are relevant in interpreting whether the respondent acted with malice, as defined by the statute. And all of these facts were established, proving malice by a preponderance of the evidence. In fact, the respondent, being in the business, should be charged with the knowledge of the damage that surely followed their actions.

THE COURT ERRED IN NOT GRANTING THE MOTION FOR RELIEF FROM THE JUDGMENT AND THE OBJECTIONS TO THE ORDER

After the decision the respondent filed a proposed order. The appellant filed objections to the order with specific findings as to suggested changes and additions to the order. The objections were filed two days before the court signed the order. The appellant filed a motion for relief from the judgment as signed. The court, while stating that the objections were untimely, proceeded to rule on the merits of the objections and rejected any additions proposed by the appellant. By doing so the court ignored inconsistencies between the decision, as announced from the bench, and the final order. Specifically, the court, among other things, refused to include the court's announced finding that the respondent had not ever complied with the settlement agreement, finding that the attempt to do so, some fifteen months later, was ineffective in any event. The court further made a finding that the appellant had surely suffered damages as a result of the failure of the respondent to live up to its agreement, and yet the court, while having ample

evidence in the record to do so, refused to award damages for the failure of the respondent to comply.

The court seemed to take the position that, since the appellant had opted to re-open the case, he could not be awarded damages for the violation of the settlement agreement. But at the very least, he proved to the satisfaction of the judge, that there were damages from August of 1992 on. Numerous examples in the testimony, as cited in the recitation of facts above, show that the appellant was continuing to suffer the after effects of the original report after the respondent had agreed to correct the report and delete the reference to the transaction. The respondent's own witnesses testified that the effect of a report of repossession lasted for seven years. And although there was testimony of the filing of bankruptcy, the evidence was that the bankruptcy itself was a product of the snowballing effect of the original report of repossession. Where the court orally announced such findings, the court should have included such findings in its order and should have at least awarded damages for the time between 1992 and the present which were shown to be caused by the failure to correct the credit history, as agreed. To do otherwise was to, in effect, allow the respondent to profit by its misdeed, suffering no consequences for their failure to comply with the agreement and causing the appellant to undertake the difficult task of trying to reconstruct the evidence of the case some fourteen years after the fact. Such difficulty was apparent from the trial and fact that documents that would have been discoverable were "destroyed" by the respondent.

CONCLUSION

Mr. Niculescu came to this country to start a better life for himself and his family. He worked hard a menial jobs. He established his credit and had purchased several items, including but not limited to, automobiles on credit. He had faithfully paid these items off in a timely manner. He had an idea to improve his lot and bought a van to avail himself of additional income he could produce with the van. When he could not get the dealership or the manufacturer to abide by their warranty, he returned the vehicle, and in his mind, acted reasonably to inform the necessary parties of the reasons for his actions. He informed the respondent that he would not pay for the

vehicle because it was defective, and that the respondent could not expect him to pay for the vehicle which was defective. Had they informed him that they expected to be paid irregardless, at least he could have protected himself. Instead, he was ignored and his case was treated the same as if he was unable to pay, rather than as it should have been, as a returned, defective product. He believed that the respondent could not finance the sale of a defective product once they were notified of the problem.

He had the right to expect that they would at least respond to his letters and phone calls, some of which were documented, some which were not. If in his naiveté, he did not know exactly what actions he should take, he believed that he would at least get a response. He got none. He was ignored.

A report was made to all of the major credit agencies listing the matter as a repossession, one of the most serious negative credit references that could be made. As unusual as the circumstances were, the van left sitting for over a month and a half at the dealership, the van being returned well before the first payment was due, and still no contact was made by the respondents to enquire as to the problem. No response was made to the certified letters that were received. Other options were available, yet none were used.

Instead the respondent resisted the lawsuit that was eventually filed. Not by vigorously defending it, but by obstruction and delay. Still no effort was made to correct the problem. Meanwhile, the damage to Mr. Niculescu continued. His once perfect credit was gone. He was forced to sleep in his car and pay loan shark interest rates to survive, eventually resulting in his filing bankruptcy.

Finally, five years after the fact, the respondent agreed to delete the reference to the repossession from his credit history. And the respondent failed to comply. The suit was re-opened. Again, the respondent obstructed and delayed. Sanctions were threatened but not enforced. The court failed to enforce the automatic provisions of the rules. Again, the respondent was allowed to benefit from its own failures. Documents were destroyed while the respondent well knew that there was a dispute about the settlement.

The trial judge, who was admittedly new to the case and had not had a chance to fully review the file, failed to follow the law and award damages that were admittedly proven. The trial judge erroneously ruled that since the appellant had chosen to re-open the entire case, rather than sue for breach of the settlement agreement, he could not award damages for the breach as well, even though he found there had been a breach of the agreement. He erroneously thought that there was an issue in this trial regarding the breach of warranty.

At trial the appellant admitted clear and sometimes undisputed evidence of his damages, from the approximately sixteen hundred dollars a month that he lost in income, the extra expenses and loss of earnings he had because he had to lease a vehicle rather than own one, to the extraordinary interest rates he was forced to pay as a direct result of his poor credit rating. The court had ample evidence to award specific damages and yet failed to make such an award. And the final order failed to include findings that were made and announced by the court. The judgment should be overturned, and either damages ordered based upon the record, or the appellant should be granted a new trial where the admissions submitted are deemed admitted with the trial conducted consistent with this court's order.

DATED this _____ day of _____, 2001.

_____

MARK A. BESENDORFER

PROOF OF SERVICE

I hereby certify that I hand delivered a copy of the foregoing Appellant's Brief to the Utah Attorney General's Office this ____ day of _____2000.

_____

MARK A. BESENDORFER

ADDENDUM

EXHIBIT

A

GENERAL RELEASE

In consideration for the payment of One Thousand Five Hundred and no/100 Dollars ($1,500.00) payable to Adrian Niculescu receipt of which is acknowledged by Adrian Niculescu (hereinafter the "Undersigned"), the Undersigned hereby releases and forever discharges Hinckley Dodge, a Utah corporation, Chrysler Motor Corporation and Chrysler Credit Corporation, their agents, principals, servants, employees, affiliates, predecessors in interest, successors in interest, subsidiaries and parent corporations (collectively referred to as the "Released Parties") from any and all claims, losses, demands, damages, actions, causes of actions or suits, of whatever kind or nature which now exist or which may hereafter accrue because of, for, arising out of or in any way connected with the subject or causes of action set forth in the files and records of the Third Judicial District Court for Salt Lake County, State of Utah, in that certain action denominated Adrian Niculescu, Plaintiff v. Hinckley Dodge, a Utah corporation, Chrysler Motor Corporation and Chrysler Credit Corporation, defendants, Civil No. 890906110CV.

This is a general and complete release of all claims against the Released Partes and includes, but is not limited to claims for personal injuries, property damages, claims for loss

of income, contribution, breach of contract, emotional distress, indemnity, attorneys fees, permanent injury, cost of litigation, loss of status, loss of credit rating, and all other claims of any kind whatsoever. It is also the express intent of the Undersigned to this General Release to relieve the Released Parties of any and all liability for indemnity contribution of attorneys fees arising from or pertaining to the legal action described above. It is further understood and agreed that this settlement is the compromise of a doubtful and disputed claim and that payment is not to be construed as an admission of liability on the part of the released parties by whom liability is expressly denied. The Undersigned represents and warrants that in entering into this release that he has had the opportunity for independent legal advice and is not relying upon any claims, representations or advices from any representative of any party hereby released.

Chrysler Credit Corporation shall issue to the appropriate credit reporting bureau an explanation detailing the complete satisfaction and settlement of its outstanding credit report relative to Adrian Niculescu including, if possible, a retraction of the repossession notice. Said explanation shall

be in conformity with the rules and regulations of the credit bureau.

Dated: August ~~12~~ 13, 1992.

Adrian Niculescu

for $1,500 Dollar Settlement

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 13th day of August, 1992, by Adrian Niculescu.

NOTARY PUBLIC

My Commission Expires: 2-3-94

Residing At: Salt Lake City Utah

NOTARY PUBLIC
JANET H. HANCOCK
800 Kennecott Building
Salt Lake City, Utah 84133
My Commission Expires
February 3, 1994
STATE OF UTAH

58483-1

EXHIBIT

B

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ADRIAN NICULESCU, Plaintiff, vs. HINCKLEY DODGE, a Utah corporation; and CHRYSLER MOTOR CORPORATION and CHRYSLER CREDIT CORPORATION, Defendants.	MINUTE ENTRY Case No. 890906110CV Honorable ANNE M. STIRBA Court Clerk: Marcy Thorne

The above-entitled matter comes before the Court pursuant to plaintiff's "Motion for Relief," filed on April 24, 2001. On May 4, 2001, defendant filed "Defendant's Memorandum in Opposition to Plaintiff's 'Motion for Relief.'" No reply has been filed and the matter was submitted for decision on May 15, 2001.

After reviewing the record in this matter, the Court finds plaintiff's motion is not well taken. Specifically, paintiff fails to cite any grounds under Rule 60(b) on which he relies. Furthermore, the Court considered plaintiff's "Objections to Proposed findings and Conclusions," although not timely submitted pursuant to Rule 4-504(2), and found them to be without merit. Accordingly, the Findings of Fact and Conclusions of Law in the form proposed by defendant (after having made the edits requested by the Court) were entered.

Based upon the forgoing, plaintiff's Motion for Relief is denied. This Minute Entry constitutes the Order regarding the matters addressed herein. No further order is required.

DATED this 29th day of May, 2001.

BY THE COURT

/s/ Judge Lubeck for
ANNE M. STIRBA
DISTRICT COURT JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 890906110 by the method and on the date specified.

METHOD	NAME
Mail	MARK A. BESENDORFER ATTORNEY PLA 942 EAST 7145 SOUTH #A-102 MIDVALE, UT 840470000
Mail	P BRYAN FISHBURN ATTORNEY DEF 4505 SOUTH WASATCH BLVD SUITE 215 SALT LAKE CITY UT 84124
Mail	GARY R. HOWE ATTORNEY DEF 10 EAST SOUTH TEMPLE GATEWAY TOWER EAST, SUITE 900 SALT LAKE CITY UT 84133

Dated this 3rd day of May, 2001.

Deputy Court Clerk

EXHIBIT

C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION OF MISSOURI

UNITED STATES OF AMERICA Plaintiff, vs CHRYSLER MOTOR CORPORATION, FRANK J. O'REILLEY and ALLEN F. SCUDDER, Defendants.	)	No. 87-165 Cr (1) St. Louis, Missouri December 14, 1987

TRANSCRIPT OF PLEA OF NOLO CONTENDERE
ON BEHALF OF CHRYSLER MOTOR CORPORATION

BEFORE THE HONORABLE JOHN F. NANGLE

APPEARANCES:

For the Government:	Thomas E. Dittmeier, Esq. United States Attorney BY JAMES STEITZ, Esq. and JAMES MARTIN, Esq. 1114 Market Street St. Louis, Missouri
For the Defendant, Chrysler Motor Corporation:	Thompson & Mitchell By Charles A. Newman, Esq. One Mercantile Center St. Louis, Missouri 63101 Obermaier, Morvillo, Abramowitz & Iason, P.C. By Barry A. Bohrer, Esq. 1120 Avenue of the Americas New York, New York 10036
Also Present:	
For Defendant Frank J. O'Reilly:	Lewis & Rice By Barry Short, Esq. 611 Olive Street St. Louis, Missouri 63101
For Defendant Allen F. Scudder	Armstrong Teasdale Kramer & Vaughn

By Fred Mayer, Esq.
611 Olive Street
St. Louis, Missouri 63101

Eileen R. Groh, Official Court Reporter
1114 Market Street, St. Louis, Missouri 63101
(314) 621-0338

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THE COURT: United States vs Chrysler. Mr. James Steitz is here for the government.

MR. STEITZ: Yes, along with Mr. Martin.

THE COURT: Mr. James Martin. Mr. Ankney is here with someone. Okay. Now, Mr. Newman, did you have an announcement for this court?

MR. NEWMAN: We do, your Honor. Our client, Chrysler Motors Corporation, would like to withdraw its previously entered plea of not guilty to the counts to the indictment and enter a plea of nolo contendre or no contest.

THE COURT: Okay, Mr. Newman. Mr. Steitz, did you have an announcement for this court?

MR. STEITZ: Judge, traditionally, and as a matter of policy, the government has always opposed such pleas of nolo contendre and we will do so on this occasion. However, the government sees and realizes that this is a unique case before the court and that similar pleas have been accepted in consumer-type cases. However, and nevertheless, the government will, pursuant to our policy, oppose this plea.

THE COURT: Okay. I forgot to call upon two of the most prominent members of this bar, probably since its inception. Mr. Short, you don't want to be recognized, and Mr. Mayer is appearing for respective clients.

MR. SHORT: I will rise in that fashion.

THE COURT: You represent who?

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MR. SHORT: Frank O'Reilly.

THE COURT: And Mr. Scudder by Mr. Mayer. Okay. Mr. Newman, do you have some, a statement to make with regard to your presentation of this plea, sir?

MR. NEWMAN: We do, your Honor. On behalf of our client, Chrysler, we will urge that the Court accept this plea for four reasons. First, by the acceptance of this plea, it will resolve the question of restitution, that is, compensation to those who have been affected by Chrysler's conduct as quickly as possible. The second reason we would urge the court accept the plea is that the practice of disconnecting the odometers during this quality test drive ceased at all plants in October of 1986 and currently Chrysler continues to operate the program but with connected odometers on all vehicles.

THE COURT: What was the date of the indictment?

MR. NEWMAN: The indictment was June 24, your Honor.

THE COURT: '87?

MR. NEWMAN: Correct.

THE COURT: Go ahead, Mr. Newman.

MR. NEWMAN: The third reason is that specially to the benefit of botn the Court and the government, and also our own client, that a very lengthy and expensive trial would be time consuming, would be void; and, lastly, the Court has been made aware and indeed the chairman of the Board of Chrysler Mr. Iacocca, in fact, announced four steps for a program to aid the

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consumers who received these vehicles which included increased warranty coverage from five years, 50 thousand miles to 7 years, 70 thousand miles, to also extending that coverage not only in time but to include certain major types of those vehicles that would not be otherwise covered and also these consumers were offered a free inspection and repair, if they brought their vehicles in. And then, lastly, as to the very few vehicles, we estimate there were approximately 40 that were damaged in the course of this program over a substantial period.

The owners of those vehicles have been offered a comparable, brand new, 1988 Chrysler, no questions asked. So for those four points, your Honor, we would ask that the court accept the plea of nolo contendre which is going to be offered by the company this morning.

THE COURT: Well, I should mention that Mr Steitz mentioned the tradition of this U.S. Attorney's Office and that is, of course, in this district, I suspect, like most federal districts across the country, and this judge, like most federal judges, have accepted nolo pleas only under extraordinary circumstances, and just for the record here, so that it's perfectly clear, I want to mention that the possibility of this plea in this case as first broached in the discussion with all of the attorneys who are present, some, and attorneys for all of parties some weeks ago, and I think that first time I advised the lawyers that I needed a good deal of information before I

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would consider such a plea, and this information would include, did include, first, a review by the lawyers in my presence of their view in the case and of their positions in the case and the anticipated evidence on the key factual cases in dispute, because, frankly, there are not a lot of questions in dispute.

I guess, the real thrust is the question of intent. There doesn't seem to be much dispute about what happened but in any event I had an opportunity to go over those things and get them from the lawyers and also to review the documents and summaries which aided me in my decision concerning this nolo plea. So the pros and cons of that, this plea and in this case have been thoroughly reviewed by me. I've studied the material that was furnished and I've given a lot of consideration to this entire matter, and I'm well satisfied that a nolo contendre plea is appropriate in this case.

There are really very few differences between the effect of a guilty plea than of a nolo plea. In this case the primary ones relate to the effect that the plea will have on any civil litigation which might arise from these circumstances, same circumstances an in this case. As the lawyers know, of course, I have the authority to order fines and restitution, but even more importantly, I will advise that I will preside over the various aspects of the related federal court class action suits that are scattered across the country, and I don't take that job lightly, and it's on,-- this district especially is

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going to be a heavy burden because everybody knows that we're under some pressure with the loss of two, recent loss of two senior judges, and Judge Meredith whose not been working in recent months, but truthfully will be soon.

But, anyway, we're pretty well inundated. I do feel in order to properly assure as fair a disposition as is possible for claims for damages that have been suffered by the class action, plaintiffs and consumers, that I will have to preside over those cases.

So I agree with you, Mr. Newman, it would be a totally unnecessary expenditure of moneys and time to take up the parties in this court in any protracted litigation, where a nolo plea gives me the same punishment alternatives as I'd have had Chrysler been found guilty after a protracted trial and also possibly protracted appellate procedures. So with the permission of Mr. Steitz and Mr. Newman, and if you have nothing else to say I'm going to proceed to ask the parties to respond to certain questions that I deem to be pertinent here. Mr. Steitz, did you have anything further at this point?

MR. STEITZ: No, your Honor.

THE COURT: Or Mr.Newman?

MR. NEWMAN: No, Your Honor.

THE COURT: So, Mr.Newman, it's my understanding that the defendant pleads nolo contendre to each of the counts in this indictment, is that correct?

A. That's correct, your Honor.

THE COURT: And did you bring with you a representative of the company to answer questions that I might have in this regard?

MR. NEWMAN: I did, your Honor. If I may identify I'd introduce to the Court, Mr. Leroy Richie, who is vice-president and general counsel of Chrysler Motors Corporation and who has been authorized by duly enacted resolution of the company to respond to the Court's inquiry.

THE COURT: Good morning, Mr. Richie. Would you step over to Mr. Rainey and be sworn, please.

LEROY C. RICHIE, SWORN:

QUESTIONS BY THE COURT:

Q. Mr. Richie, you can stand right there. I'm not going to make a witness out of you in that regard. And you've been identified as the general counsel for Chrysler, that's correct, is it?

A. That is correct. I'm a vice-president of the company.

Q. And on the Board of Directors of the defendant. You're a lawyer?

A. I'm a lawyer.

Q. Where did you go to school, Mr. Richie?

A. New York City.

Q. And would you represent to me that the Board of Directors of Chrysler has authorized, is authorized to allow you to appear

here to enter this plea?

A. They have.

Q. And did they do that by a resolution?

A. They did.

Q. Mr. Newman, you supplied --

MR. STEITZ: Your Honor, yes. I do have a copy of the resolution.

THE COURT: And the paper Mr. Newman is handing to me signed by G. Lee Phillip is an appropriate resolution to this effect, is it?

A. Yes it is.

THE COURT: I'll order this be made a part of the record of this case, Mr. Raney. I don't think I'll insult the defendant with the form question that should be asked, namely whether you are financally able to pay a substanial fine, but I sense, Mr. Newman, that they would be.

MR. NEWMAN: Correct, your Honor.

THE COURT: Mr. Richie, and again, you've gone over these charges with Mr. Newman and your lawyers, I guess, a number of times?

A. I have.

THE COURT: May I assume you've gone over them with your Board of Directors?

A. Yes I have.

Q. So that you and they are personally familiar with the

charges?

A. Yes. I'm familiar with the charges .

Q. Now, you know, then I will go through the litany, that you are entitled to counsel to represent you throughout?

A. I know that.

Q. You know, of course, that Chrysler has a right to plead guilty and to persist in this plea. You know, that?

MR. NEWMAN: Not guilty.

Q. Plead not guilty. You've got the right to plead guilty, too.

Q. You know, that you have those rights?

A. Yes, I do.

Q. Okay. And you know that you have the right to a speedy and public trial before a judge or jury?

A. Yes.

Q. And in that trial, that through the use of counsel, that you have a right of confrontation, that is, to look at the witnesses, to cross-examination the witnesses of the government and things of that sort, do you?

A. Yes, I do.

Q. Do you know that the government has the burden of proof to prove it's case beyond a reasonable doubt. Do you understand that?

A. I understand that.

Q. And you have knowledge of the presumption of innocence that

applies to this case and to all criminal cases and it would be applicable to presume that Chrysler is innocent in this case until the government carries it's burden of proof beyond a reasonable doubt by credible evidence to the satisfaction of the judge and jury trying the case? You're aware of that, are you?

A. I am aware of that.

Q. Of course, as in any such criminal trial, Chrysler would not have to put on any testimony, any evidence, but could stand or sit and remain silent with regard to it's defense?

A. I understand.

Q. It has offered no evidence -- any criminal defendant in a criminal case is not required to offer any evidence on his own or it's behalf? You're aware of that?

A. I am aware of that.

Q. Likewise, you have the right to subpoena witnesses who might testify on your behalf and I will order that they appear and testify, providing that they are available and that they will furnish information on the case? You know that?

A. I know that, your Honor.

Q. Have any threats or promises other than the fact that you're in this lawsuit, but any threats or promises of that nature, of a different nature, been made to get you to plead guilty or nolo contendre?

A. No, they have not.

Q. And if I accept your plea of nolo contendre, you realize

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that a judgment of conviction will be entered upon that plea, do you?

A. I understand that.

Q. Do you believe there's any understanding or has any prediction been made concerning the sentence that I will order other than the explaining the fine that we're going to get into?

A. No.

Q. Okay. And you know that I do not have to accept your plea of nolo contendre unless I'm satisfied that you fully understand your rights? You realize that, Mr. Richie?

A. I do realize that.

Q. So with regard to the range of punishment, fines, restitution, special assessments, let me just mention some things and then I want, I don't want any speeches from you folks, but I want your response. This matter has been discussed in broad terms by the lawyers, you're aware of that?

A. I am aware of that.

Q. By the lawyers, I mean all of the lawyers for the defendants as well as me? You know that?

A. Yes.

Q. Further you realize that no conclusion and no suggestion of any sort was made by me as to what fine, what type of order, restitution I might have? You realize that?

A. I do realize that.

Q. And the reason for discussing it was that there are some

things that aren't totally clear with regards to the law in this regard. You understand that Mr. Richie?

A. I do understand.

Q. And in fact, I want to be -- I think I'm safe in saying that the range of fines that were discussed as conceivably being possible were from one million dollars up to $180 million. Are you aware of that proposition?

A. Yes, sir. Yes, your Honor. I'm aware of that.

Q. By being, saying you're aware of it, -- Mr. Steitz, you are, you're likewise aware of this discussion?

A. Yes, your Honor.

Q. Do you both understand what I'll say now, that before I will enter any fine in, and order such in this case, that I will receive briefs on that question from the lawyers, and will act upon those briefs and that I will set such fine as I deem to be appropriate and proper under the applicable law. Is that acceptable to you, Mr. Richie?

A. That is acceptable.

Q. And Mr. Newman?

MR. NEWMAN: Correct, your Honor.

Q. And Mr. Steitz?

MR. STEITZ: Yes, your Honor.

Q. So that I am covering a, that, again it's, it arises out of the fact that the laws have been passed concerning fines and things of that sort and some of it is untested territory, and I

would also say to the parties that should either of you with regard to the fine question not be satisfied or not be, my fine to be appropriate or any of the punishment, you reserve your rights of appeal, both parties to do that? Yes?

MR. NEWMAN: Correct, your Honor?

A. Yes.

THE COURT: Mr. Steitz, would you just briefly outline the evidence that you will expect to adduce at this trial.

MR. STEITZ: Very briefly, your Honor, the government's proof would show at least between 1949 and by Chrysler's own admission, 1929 and October of 1986 Chrysler authorized it's management all over the country and Canada to drive newly manufactured Chrysler vehicles with disconnected odometers on trips both to and from work and on other personal trips and errands, that after these trips were made, the odometers would then be reconnected and sold to unaware consumers and dealers. In the event, the odometers on these vehicles were mistakenly left connected and registered mileage, and then Chrysler directed that these odometers be changed, proof would show that the reason for these acts was to avoid complaints from dealers and consumers that they were purchasing vehicles with excessive registered mileage and, further, your Honor, the practice, this practice went on for many, many years and many, many cars were involved. We have not yet reached an impact number of identifable cars. However the number is at least 32,750 and

after a computer analysis by all of the parties involved, we feel that this number will be considerably higher. Further, the evidence would show that we found that at least 44 of these cars were involved in accidents while being driven in this manner and that the consumers in these situations were never apprized of this situation.

Finally, your Honor, the evidence would show that the mailings and interstate wire transmissiona were used during the course of these.

THE COURT: Now, you have basically tracked in a broad sense the indictment in this case, am I right?

MR. STEITZ: Yes, your Honor.

THE COURT: The first count is the conspiracy count?

MR. STEITZ: Yes, your Honor.

THE COURT: And the next, 16 in all, and the counts 2 through 14 are wire and mail frauds?

MR. STEITZ: yes, your Honor.

THE COURT: And the last count?

MR. STEITZ: 2 through 15 --

THE COURT: 2 through 15, wire and mail, yes. Pardon me. Okay.

QUESTIONS BY THE COURT:

Q. And, again, you, Mr. Richie, you're aware that that's the charge, the summary of the charges in this case and the Board of Directors is likewise aware, is that right?

A. Yes, sir.

Q. I didn't ask you, you also know, Mr. Richie, that I have the right to order restitution in this case?

A. I am aware of that, your Honor.

Q. Okay. Mr. Newman and Mr. Richie, do you still desire to plead nolo contendre for all of these counts on behalf of Chrysler at this time?

MR. NEWMAN: Yes, your Honor.

A. Yes, your Honor.

THE COURT: Anything further, Mr. Steitz at this point or Mr. Newman at this point.?

MR. STEITZ: No, sir .

MR. NEWMAN: No, your Honor.

THE COURT: All right. I'm going to find that the ple made by the defendant has been made voluntarily, that it has been made knowledgably. I will also find that Mr. Richie is th general counsel and vice-president of the defendant corporation and he's accordingly authorized by a valid resolution to enter this plea and the resolution has been made a part of the record and I'll furthers find that the Board of Directors of Chrysler was authorized to so direct Mr. Richie to enter such plea and further find that the defendant is financially able to pay any substantial fines and other charges and costs, that may be imposed by this Court. And, having given due consideration to the parties and the interests of plaintiff and the effective

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administration of it, I will accordingly enter a judgment of conviction on the plea of nolo contendre. Any further announcements by either of the parties before I --

MR. STEITZ: The government does in light of the action taken by the Court today and the plea by Chrysler, the government would move to dismiss charges against Mr. Scudder and Mr. O'Reilly, that were filed in this matter.

THE COURT: And, Mr. Short and Mr. Mayer, you have no objection. Mr. Scudder and Mr. O'Reilly are present in court.

MR. SHORT: They are present, your Honor, and we, of course, have no objection.

MR. MAYER: Yes, sir.

THE COURT: Well, I think it's an appropriate motion under the circumstances and I will so order those dismissals. Gentlemen, I'll order a limited type of presentence report and, Mr. Newman, in due course check with Mr. Lorenz or whoever it is to handle that for me. I'm going to set a sentencing date next year, February the 19th. Is this a Friday, Earl?

THE CLERK: Yes, it is a Friday.

THE COURT: I'll set that date with the understanding that it well may be adjusted, depending upon the course of information I receive from you gentlemen, as well as the civil matters that are pending, and, if you would, let's see, what's today, December the 14th, within three weeks, why don't you submit whatever kind of brief. Each of you can do concurrently,

you don't need the others, and then I'll give you three or so, three weeks from this day; you'll each file a brief with regard to the question of fines and restitution, which I don't think you need to touch upon too much but that's up to you two and then I'll give you each another week thereafter to respond to the other party's filing and anything else at this time.

MR. STEITZ: Judge, just one question, would that be a brief just on the fine and restitution? It's wouldn't be a sentencing memorandum?

THE COURT: No, just on the fine and restitution, jus on this legal question.

MR. NEWMAN: We have nothing else.

MR. STEITZ: That's all your Honor.

THE COURT: Okay.

(Court recessed.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

12-17-87
Date

Eileen P. Hale
Official Court Reporter.

EXHIBIT

D

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ADRIAN NICULESCU, Plaintiff, vs. HINCKLEY DODGE, et al Defendants.	MINUTE ENTRY Case No. 890906110CV Honorable ANNE M. STIRBA Court Clerk: Marcy Thorne September 27, 1999

The above-entitled matter comes before the Court pursuant to Rule 4-501 of the Utah Code of Judicial Administration. Specifically, on August 31, 1999, plaintiff filed a "Motion to Compel" against Chrysler Credit Corporation, which was supported by an affidavit of plaintiff's counsel. Defendant Chrysler Credit Corporation did not oppose the motion. The motion was submitted for decision on September 20. There is no request for oral argument.

The Court, having considered the motion, the supporting affidavit and the good cause that has been shown, hereby grants the motion to compel and orders defendant Chrysler Credit Corporation to respond to plaintiff's discovery requests on or before October 8, 1999. Failure to comply with this order may result in an award of attorneys fees and costs or the answer of this defendant to be stricken and its default entered.

This signed minute entry constitutes the order regarding the matters addressed herein. No further order is required.

DATED this 27th day of September, 1999.

BY THE COURT

ANNE M. STIRBA
THIRD DISTRICT JUDGE

cc: Counsel/Pro Se Parties of Record